THE HONOUABLE SRI JUSTICE V.ESWARAIAH

W.P. No. 16039 of 2007

Date:27-07-2007

Between:

Balina Venkateswara Rao .. **PETITIONER**

AND

The Superintendent of Police, East Godavari at Kakinada and 8 others.

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RESPONDENTS

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ORDER:

The petitioner seeks a writ of mandamus to declare the action of the 2nd respondent in not giving protection to the petitioner's life and property in spite of injunction order granted by the civil Court, as illegal and arbitrary.

It is the case of the petitioner that he is the absolute owner of the land of an extent of 194 square yards in Sy.No.380/2 including a thatched house bearing D.No.1-14 of Jagannadhapuram village, hamlet of Gummuluru, Korukonda mandal, East Godavari District having purchased the same under a registered sale deed No.1283 of 2007, dated 10.05.2007 from one Vanka Yedukondalu. It is stated that when the respondents 3 to 9 started illegally interfering with the peaceful possession and enjoyment of the said land, the petitioner filed o.S.No.529 of 2007 along with an application for grant of interim injunction in I.A.No.1193 of 2007 on the file of the Principal Junior Civil Judge, Rajahmundry and as no one appeared for the respondents, the learned Magistrate after making them ex parte in the said I.A.No.1193 of 2007, granted temporary injunction in favour of the petitioner and against the respondents from interfering with the peaceful possession and enjoyment of the said property. It is stated that the suit is pending. It is stated that in spite of injunction granted, the respondents 3 to 9 are interfering in the

said property and therefore, the petitioner made a representation, dated 21.05.2007 for giving necessary protection before the second respondent. But, no action has been taken by the second respondent.

Admittedly, the suit filed by the petitioner is pending. If the injunction order is not being implemented or violated, two courses are open for the petitioner; one is to file another interlocutory application seeking police protection to direct the concerned police and another remedy available is to file contempt proceedings for the violation of the injunction order. As there is a effective remedy available to the petitioner to seek police protection before the Civil Court for implementing the injunction order, I am of the opinion that when the civil suit is pending before the Civil Court, it is not just and proper to usurp the powers of the Civil Court and issue a writ of mandamus to implement the injunction order. The Apex Court in **P.R. MURLIDHARAN AND OTHERS v. SWAMI DHARMANANDA THEERTHA PADAR AND OTHERS**[1] held that a writ for "police protection" so-called, has only a limited scope, as, when the Court is approached for protection of rights declared by a decree or by an order passed by a civil court and it cannot be extended to cases where rights have not been determined either finally by the civil court or; at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order.

In view of the aforesaid facts, I am of the opinion that it is just and proper to direct the petitioner to approach the civil Court. Therefore, I am not inclined to issue a writ of mandamus and the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. It is needless to mention that if any application is filed by the petitioner, it is the bounden duty of the civil Court to pass expeditious orders on the said application to implement its own injunction order after following due procedure of law. No costs.

V.ESWARAIAH, J.

Date:27.07.2007
ccm

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[1] 2006(3) Supreme – 170